

Memorandum

U.S. Department of Transportation National Highway Traffic Safety Administration

Date: APR 30 2004

Subject: Update on Lobbying Restrictions on
State Officials Who Receive NHTSA Funds

From: Jacqueline Glass
Chief Counsel

To: Marlene Markinson
Associate Administrator for ICOR

By memorandum of February 25, 2000, we summarized the impact of then new lobbying restrictions on State officials who administer or whose salaries are supported, in whole or in part, by NHTSA funds. Since that time, some of the restrictions discussed in that memo have changed. The purpose of this memorandum, which supersedes our February 25, 2000 memo, is to update you and members of your staff on existing restrictions on lobbying activity by State officials supported by NHTSA funds.

Currently, lobbying prohibitions are contained in two Federal statutes: (1) The Anti-Lobbying Act (a criminal statute), 18 U.S.C. § 1913; and (2) The Transportation Equity Act for the 21st Century (TEA-21), 49 U.S.C. § 30105.

Restriction on Grassroots Lobbying

The Anti-Lobbying Act, which Congress broadened in scope in 2002, prohibits the use of appropriated funds, directly or indirectly, to pay for:

any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device intended or designed to influence in any manner a member of Congress, a jurisdiction, or an official of any government, to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy, or appropriation, whether before or after the introduction of any bill, measure, or resolution proposing such legislation, law, ratification, policy or appropriation.

Violators are subject to a fine of not more than \$500, imprisonment of not more than one year, or both, and removal from office.

The Act prohibits the use of Federal funds for "grassroots" lobbying campaigns that encourage third parties, members of special interest groups or the general public to contact members of Congress or of a State or local legislature or an official of any government in support of or in opposition to a legislative, policy or appropriations matter. It applies to activities both before and after the introduction of legislation.

These prohibitions apply to all DOT funds, including NHTSA funds awarded to States under grants, cooperative agreements and contracts. Accordingly, these prohibitions apply to State officials whose salaries are supported, in whole or in part, by NHTSA funds.

TEA-21 Restrictions on Lobbying State and Local Legislators

The Transportation Equity Act for the 21st Century (TEA-21), which was enacted in 1998, prohibits the use of NHTSA funds for "any activity specifically designed to urge a State or local legislator to favor or oppose the adoption of any specific legislative proposal pending before any State or local legislative body."

This prohibition imposes additional lobbying restrictions on NHTSA, such as by prohibiting agency officials from:

- Visiting or sending letters to State or local legislators, urging them to favor or oppose specific State or local legislation pending in those jurisdictions; or
- Developing and providing to anyone (including lobbyists) materials designed expressly to advocate for the enactment or repeal of specific pending State or local legislation.

It is the agency's continued view, however, that these restrictions do not apply to State officials engaged in State-sanctioned communications with their legislatures, even if their salaries are supported, in whole or in part, with NHTSA funds. We believe that any direct communications between State executive officials and State or local legislators properly are governed by the laws, regulations and customary practice in the State.

Special Provision in TEA-21 regarding Testimony

Although TEA-21 restricts communications between NHTSA officials and State or local legislators, the TEA-21 restriction "does not prohibit officers or employees of the United States from testifying before any State or local legislative body in response to the invitation of any member of that legislative body or a State executive office. "Accordingly, State executive officials should note that they (as well as members of a State or local legislative body) are authorized to invite Federal officials to testify before that legislative body on pending legislation. (NHTSA officials have been advised that any such invitation should be documented in writing.)

If you or your staff have questions or need further information regarding lobbying restrictions, please contact John Donaldson, Assistant Chief Counsel for Legislation and General Law.